



## **SOCIAL SECURITY ADMINISTRATION**

### **20 CFR Parts 404, 408, and 416**

**[Docket No. SSA-2021-0046]**

**RIN 0960-AI52**

Reducing Burden on Families Acting as Representative Payees of Social Security

Payments

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** Section 102 of the Strengthening Protections for Social Security Beneficiaries Act of 2018 (Strengthening Protections Act) reduced the burden on families by exempting certain representative payees from our annual accounting requirements. We are revising our regulations to incorporate the statutory exemption for certain representative payees from annual accounting.

**DATES:** This final rule is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Peter Smith, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-3235. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

### **SUPPLEMENTARY INFORMATION:**

#### Background

We make payments to a representative payee for beneficiaries who are incapable of managing their Social Security benefits, Special Veterans Benefits, or Supplemental

Security Income payments. Generally, our adult beneficiaries have the right to receive their benefits directly and manage them independently. However, we may determine that a beneficiary is unable to manage or direct the management of benefit payments because of a mental or physical condition, or because of youth.<sup>1</sup> In these cases, we appoint a representative payee when we believe it will be in the beneficiary's interest to receive benefits through a representative payee instead of receiving them directly.<sup>2</sup>

When we select a representative payee, our primary concern is to choose someone who will best serve the beneficiary's interest.<sup>3</sup> A representative payee may be an organization, such as a social service agency, or a person, such as a parent, other relative, or friend of the beneficiary whom we select to receive and manage benefit payments on behalf of the beneficiary. It is important for us to select the best possible representative payee to ensure that the benefits are used in the best interest of the beneficiary and in accordance with other responsibilities and requirements discussed in our regulations.<sup>4</sup>

#### Annual Accounting Form

As a result of the decision in *Jordan v. Schweiker*,<sup>5</sup> all representative payees other than State mental hospitals were required to file with us an annual accounting of their use of beneficiaries' benefits. Specifically, we required all representative payees to complete an annual accounting form describing how the representative payee used the benefits. We also requested the representative payee to report in detail where the beneficiary lived during the accounting period, who made the decisions on how benefits were spent or saved, how much of the benefit payments were saved, and how the savings were

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<sup>1</sup> 20 CFR 404.2001(b), 408.601(b), 416.601(b) and 42 U.S.C. 405(j)(1)(A)-(j)(2)(A), 1383(a)(2)(A)-(a)(2)(B).

<sup>2</sup> 20 CFR 404.2001(a), 408.601(a), and 416.601(a).

<sup>3</sup> 20 CFR 404.2021, 408.621, and 416.621.

<sup>4</sup> 20 CFR 404.2035, 408.635, 416.635 and, generally, 20 CFR 404 Subpart U.

<sup>5</sup> *Jordan v. Schweiker*, No. 79-994-W, 1983 U.S. Dist. LEXIS 18484 (W.D. Okla. Mar. 17, 1983); *see also*, *id.* (order of March 26, 1984) (subsequent history omitted). We have included a copy of the relevant decisions in *Jordan* in the rulemaking docket for this rule. The records are available at [regulations.gov](https://www.regulations.gov) as a supporting and related material for docket SSA-2021-0046.

invested.<sup>6</sup>

On April 13, 2018, Congress enacted the Strengthening Protections Act.<sup>7</sup> Section 102 of this Act, “Reducing the Burden on Families,” amended sections 205(j)(3), 807(h), and 1631(a)(2)(C) of the Social Security Act to relieve families from the burdens of the accounting requirement. Under the new statutory provision, representative payees who are parents or legal guardians living with their child, parents living with an adult disabled child, and spouses are no longer required to file an annual report accounting for how they spend the child’s or spouse’s benefits. However, these representative payees are still legally required to use the benefits on behalf of the beneficiary and according to our rules.<sup>8</sup>

Following the passage of the Strengthening Protections Act<sup>9</sup>, we modified our practice to exempt from our annual accounting requirements any representative payee who is:

- A natural or adoptive parent of a minor child entitled to title II benefits or eligible for title XVI payments, or both, who primarily resides in the same household as the beneficiary;
- A legal guardian of a minor child entitled to title II benefits or eligible for title XVI payments, or both, who primarily resides in the same household as the beneficiary;

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<sup>6</sup> 20 CFR 404.2065, 408.665, and 416.665.

<sup>7</sup> Strengthening Protections for Social Security Beneficiaries Act of 2018, Pub. L. 115-165, 132 Stat. 1257, available at <https://www.congress.gov/bill/115th-congress/house-bill/4547>.

<sup>8</sup> Other payees who are not parents, spouses, or State mental hospitals participating in our onsite review process are still required to file the annual report.

<sup>9</sup> Shortly after enactment of the Strengthening Protections Act, the Department of Justice filed a motion for partial relief from the court’s prior orders in *Jordan* to allow for implementation of the accounting exemption. On May 17, 2018, the Court granted the motion and exempted “from the annual accounting requirement any representative payee who is either (1) a parent, or other individual who is a legal guardian of, a minor child beneficiary who primarily resides in the same household, (2) a parent of an adult disabled beneficiary who primarily resides in the same household or (3) the spouse of a beneficiary.” See *Jordan v. Commissioner of Social Security*, No. 79-994-W, slip op. at 2 (W.D. Okla. May 17, 2018). We have included a copy of this decision in the rulemaking record.

- A natural or adoptive parent of a disabled individual (as defined in sections 223(d) or 1614(a)(3) of the Act) entitled to title II benefits or eligible for title XVI payments, or both, who primarily resides in the same household as the beneficiary; or
- The spouse of an individual entitled to title II benefits or eligible for title VIII or title XVI payments.

#### Explanation of Changes

To ensure our regulations reflect the provisions of section 102 of the Strengthening Protections Act, we are revising 20 CFR 404.2065, 408.665, and 416.665 to remove the annual accounting requirement for exempt representative payees. While there are no substantive changes aside from the exemption for certain representative payees, the revisions involve some restructuring of the regulations. We are making no other changes to our regulations.

#### Regulatory Procedures

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 when we develop regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(A)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final rule. The APA provides exceptions to the notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We find that there is good cause under 5 U.S.C. 553(b)(B) to issue this regulatory change as a final rule without prior public comment. We find that prior public comment is unnecessary because this final rule merely makes our regulations (20 CFR 404.2065, 408.665, and 416.665) consistent with the provisions of the Strengthening Protections Act, which exempts certain representative payees from the requirement of submitting an

annual accounting report. Because we are only making our regulations consistent with the Strengthening Protections Act, and we are making no other changes, we find that prior public comment is unnecessary and there is good cause to issue this final rule without prior notice and public comment.

In addition, we find that there is good cause for dispensing with the 30-day delay in the effective date of this final rule as provided by 5 U.S.C. 553(d)(3). As we explained above, this final rule merely makes our regulations consistent with the Strengthening Protections Act, which is already in effect. Therefore, we find that it is unnecessary to delay the effective date of the final rule.

#### Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order (E.O.) 12866, as supplemented by E.O. 13563. Therefore, OMB did not review it.

We also determined that this final rule meets the plain language requirement of E.O. 12866.

#### Executive Order 13132 (Federalism)

We analyzed this final rule in accordance with the principles and criteria established by E.O. 13132 and determined that the final rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this final rule would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

#### Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory

flexibility analysis.

### Paperwork Reduction Act

While this final rule exempts certain representative payees from the annual accounting requirement, and will affect the Old-Age, Survivors, and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs, the final rule does not require any updates or changes to any of our forms.

We use the following forms to collect representative payee information during Title II & Title XVI Claims:

- SSA-637, SSA-639, Site Review Questionnaire for Volume Payees, Fee-For-Service Payees & Beneficiary Interview Form (0960-0633)
- SSA-445, Application to Collect a Fee for Payee Services (0960-0719)
- SSA-11-BK, Request To Be Selected As Payee (0960-0014)
- SSA-623-F6, SSA-6230-F6, SSA-6234-F6, Representative Payee Report (Adult, Child, and Organizational Representative Payee) (0960-0068)
- SSA-624-F5, Representative Payee Evaluation Report (0960-0069)
- SSA-6233-BK, Representative Payee Report of Benefits and Dedicated Account (0960-0576)
- SSA-1696-U4, Appointment of Representative (0960-0527)
- SSA-4547 Advance Designation of Representative Payee (0960-0814)
- SSA-2032-BK, Request for Waiver of Special Veterans Benefits (SVB) Overpayment Recovery or Change in Repayment Rate (0960-0698)

This final rule does not require any changes to the forms listed above, nor will it affect public reporting burdens. Therefore, this final rule does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 9601, Social Security—Disability Insurance, 96.002, Social Security—Retirement Insurance; 96.004, Social

Security—Survivors Insurance; and 96.006, Supplemental Security Income).

## **List of Subjects**

### **20 CFR Part 404**

Administrative practice and procedure; Blind, Disability benefits; Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

### **20 CFR Part 408**

Administrative practice and procedure; Reporting and recordkeeping requirements; Social security; Supplemental Security Income (SSI), Veterans.

### **20 CFR Part 416**

Administrative practice and procedure; Reporting and recordkeeping requirements; Social security; Supplemental Security Income (SSI).

The Acting Commissioner of the Social Security Administration, Kilolo Kijakazi, Ph.D., M.S.W., having reviewed and approved this document, is delegating the authority to electronically sign this document to Faye I. Lipsky, who is the primary Federal Register Liaison for SSA, for purposes of publication in the Federal Register.

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Faye I. Lipsky,  
Federal Register Liaison,  
Office of Legislation and Congressional Affairs,  
Social Security Administration.

For the reasons stated in the preamble, we amend 20 CFR parts 404, 408, and 416 as set forth below:

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY  
INSURANCE (1950- )**

**Subpart U—Representative Payment**

1. The authority citation for subpart U of part 404 continues to read as follows:

AUTHORITY: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

2. Revise §404.2065 to read as follows:

**§ 404.2065 How does your representative payee account for the use of benefits?**

(a) Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year (except as provided in paragraph (b) of this section and for certain State institutions that participate in a separate onsite review program).

(b) Your representative payee is exempt from the accounting requirement when your representative payee is:

(1) A natural or adoptive parent of a minor child entitled to title II benefits who primarily resides in the same household as the beneficiary;

(2) A legal guardian of a minor child entitled to title II benefits who primarily resides in the same household as the beneficiary;

(3) A natural or adoptive parent of a disabled individual (as defined in section 223(d) of the Act) entitled to title II benefits who primarily resides in the same household as the beneficiary; or

(4) The spouse of an individual entitled to title II benefits.

(c) We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make



accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

- (1) Where you lived during the accounting period;
- (2) Who made the decisions on how your benefits were spent or saved;
- (3) How your benefit payments were used; and
- (4) How much of your benefit payments were saved and how the savings were invested.

## **PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS (1950- )**

### **Subpart F— Representative Payment**

3. The authority citation for subpart F of part 408 continues to read as follows:

AUTHORITY: Secs. 205(j)(1)(C), 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 405(j)(1)(C), 902(a)(5), 1007, and 1010).

4. Revise §408.665 to read as follows:

#### **§ 408.665 How does your representative payee account for the use of your SVB payments?**

(a) Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year.

(b) Your representative payee is exempt from the accounting requirement when your representative payee is the spouse of an individual eligible for SVB payments.

(c) We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to provide accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required report, we may require your payee to appear in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

- (1) Where you lived during the accounting period;
- (2) Who made the decisions on how your benefits were spent or saved;
- (3) How your benefit payments were used; and
- (4) How much of your benefit payments were saved and how the savings were invested.

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND,  
AND DISABLED (1950- )**

**Subpart F— Representative Payment**

5. The authority citation for subpart F of part 416 continues to read as follows:

AUTHORITY: Secs. 205(j)(1)(C), 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 405(j)(1)(C), 902(a)(5), 1383(a)(2) and (d)(1)).

6. Revise §416.665 to read as follows:

**§ 416.665 How does your representative payee account for the use of benefits?**

(a) Your representative payee must account for the use of your benefits. We require written reports from your representative payee at least once a year (except as

provided in paragraph (b) of this section and for certain State institutions that participate in a separate onsite review program).

(b) Your representative payee is exempt from the accounting requirement when your representative payee is:

(1) A natural or adoptive parent of a minor child eligible for title XVI benefits who primarily resides in the same household as the beneficiary;

(2) A legal guardian of a minor child eligible for title XVI benefits who primarily resides in the same household as the beneficiary;

(3) A natural or adoptive parent of a disabled individual (as defined in section 1614(a)(3) of the Act) eligible for title XVI benefits who primarily resides in the same household as the beneficiary; or

(4) The spouse of an individual eligible for title XVI benefits.

(c) We may verify how your representative payee used your benefits. Your representative payee should keep records of how benefits were used in order to make accounting reports and must make those records available upon our request. If your representative payee fails to provide an annual accounting of benefits or other required reports, we may require your payee to receive your benefits in person at the local Social Security field office or a United States Government facility that we designate serving the area in which you reside. The decision to have your representative payee receive your benefits in person may be based on a variety of reasons. Some of these reasons may include the payee's history of past performance or our past difficulty in contacting the payee. We may ask your representative payee to give us the following information:

(1) Where you lived during the accounting period;

(2) Who made the decisions on how your benefits were spent or saved;

(3) How your benefit payments were used; and

(4) How much of your benefit payments were saved and how the savings were invested.

[FR Doc. 2022-12682 Filed: 6/10/2022 8:45 am; Publication Date: 6/13/2022]